

# **ARTICLE 3.00**

## **GENERAL PROVISIONS**

### **Section 3.01 -- ADMINISTRATIVE REGULATIONS**

#### **A. Scope of Regulations**

No structure or tract of land, or part thereof, shall hereafter be used or occupied, and no structure, or part thereof, shall be erected, altered, or moved, except in conformity with the provisions of this Ordinance.

Furthermore, any business or organization in violation of local, state or federal law is prohibited from locating or operating within the city limits of Midland.

However, where a building permit for a building or structure has been issued in accordance with law prior to the effective date of this Ordinance and construction is begun within six (6) months of the effective date, said building or structure may be completed in accordance with the approved plans. Any subsequent text or map amendments shall not affect previously issued valid permits.

#### **B. Minimum Requirements**

The provisions of this Ordinance shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, and general welfare.

#### **C. Relationship to Other Ordinances or Agreements**

Except as noted in Section 32.02, this Ordinance is not intended to repeal or annul any ordinance, rule, regulation, permit, easement, covenant, or other private agreement previously adopted, issued, or entered into and not in conflict with the provisions of this Ordinance.

However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than other such ordinances, rules, regulations, permits, easements, covenants, or other private agreements, the requirements of this Ordinance shall govern.

Where applicable, this ordinance incorporates all aspects of the Tri City Area Joint Airport Zoning Ordinance, as amended, into its requirements.

#### **D. Vested Right**

Nothing in this Ordinance should be interpreted or construed to bestow any permanent vested rights in the continuation of any particular use, district, zoning classification, or permissible activities therein. Furthermore, such rights as may exist through enforcement of this Ordinance are hereby declared to be subject to subsequent amendment, change or modification as may be necessary for the preservation or protection of public health, safety, and welfare, to the extent that such rights are not protected by the nonconforming use provisions in Article 4.00.

#### **E. Continued Conformity with Yard and Bulk Regulations**

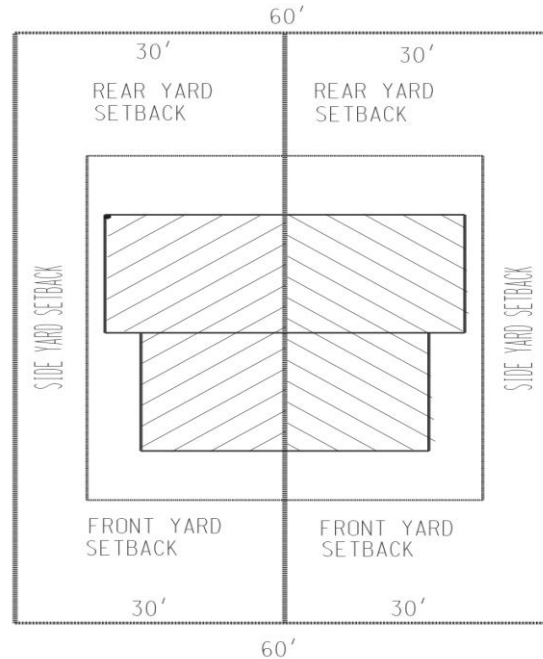
The maintenance of yards and other open space and minimum lot area legally required for a structure shall be a continuing obligation of the owner of such structure or of the property on which it is located, for as long as the structure is in existence. No open space shall be encroached upon nor shall any structure be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which the structure is located. Where all or a portion of a lot has been dedicated specifically to an existing or planned use or structure to achieve compliance with Ordinance requirements, said lot or portion thereof, shall not be used in connection

with another building, structure or use to achieve compliance with Ordinance requirements.

## **F. Division and Consolidation of Land**

The division and consolidation of land shall be in accordance with the Land Division Act, Michigan Public Act 288 of 1967, as amended and the City of Midland Land Division Ordinance. No lot or parcel division into two (2) or more lots shall be approved unless all lots resulting from each such division or sale conform to all regulations of the zoning district in which the property is located.

This shall not prohibit the dividing of the ownership of a duplex structure and its lot, when said duplex structure has been constructed in accord with the requirements of this Ordinance and a deed restriction prohibiting construction of detached dwellings on the resulting lots is recorded.



## **G. Unlawful Buildings, Structures, Site Designs and Uses**

A building, structure, or use that did not lawfully exist at the time of adoption of this Ordinance shall not be made lawful solely by adoption of this Ordinance. In case any building, structure, or part thereof, is used, erected, occupied or altered contrary to the provisions of this Ordinance, such building, structure or use shall be deemed an unlawful nuisance and may be required to be vacated, torn down or abated by any legal means, and shall not be used or occupied until it has been made to conform to the provisions of this Ordinance. Public expenditures toward abating any such nuisance shall become a lien upon the land.

## **H. Voting Places**

The provisions of this ordinance shall not be construed to interfere with the temporary use of any property as a voting place in connection with a municipal or other public election.

## **I. Restoring Unsafe Buildings**

Nothing in this ordinance shall prevent the strengthening or the restoration to a safe condition of any part of any building or structure declared unsafe by the Building Official or required compliance with this lawful order as specified in Article 4.00.

## **Section 3.02 -- ALLOWABLE USES**

No structure shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any structure or land be used, designed or arranged for any purpose other than is permitted in the zoning district in which the structure or land is located.

## **Section 3.03 -- ACCESSORY STRUCTURES**

### **A. General Requirements**

#### **1. Timing of Construction**

No accessory structure, including private garages and utility structures, shall be constructed upon or moved to any parcel of property unless there is a principal building, or use being constructed or already existing on the same parcel of land.

#### **2. Location in Proximity to Easements or Right-of-Way**

Accessory structures, or uses shall not be located within a dedicated easement or right-of-way, unless the terms of the easement or right-of-way specifically permit such buildings, structures, or uses.

#### **3. Attached Accessory Structures**

Unless otherwise specified in this Section, accessory structures which are attached to the principal structure (such as an attached garage, breezeway, or workshop) shall be considered a part of the principal building or structure for the purposes of determining conformance with area, setback, height, and bulk requirements.

#### **4. Use Restrictions**

No accessory structure shall be used in any part for dwelling purposes.

#### **5. Applicability of Other Codes and Ordinances**

Accessory structures shall be subject to all other applicable codes and ordinances regarding construction, installation, and operation. A zoning compliance permit, as outlined in Section 31.06, shall be required for all accessory structures with floor area between 50 and 200 square feet. Any accessory structure greater than 200 square feet in floor area shall require a building permit.

#### **6. Foundations**

All Accessory structures with a floor area between 50 and 200 square feet shall be required to have a rat wall foundation that extends a minimum of 12" below surrounding grade. The rat wall foundation shall be constructed from concrete, block or foundation grade lumber and conforms to the Michigan Building Code. An accessory structure may also be placed on a concrete or asphalt slab which extends a minimum of two (2) feet horizontally from all four sides of the structure.

#### **7. General Requirements**

Accessory structures shall be only located in the rear or side yards and shall comply with height, setback, and lot coverage requirements for accessory structures, unless otherwise permitted in this Ordinance.

#### **8. Exceptions to Accessory Structure Standards**

- a. Antennae shall comply with the height standards specified in Section 3.16.A.
- b. Such accessory structures as ornamental light fixtures, flag poles up to 28', other

ornamental fixtures, basketball backboards, and play equipment (excluding swimming pools), may be located in the front yard, but shall be no closer than six (6) feet to any front or side lot line.

- c. Above ground swimming pools with attached decks must comply with Table 3.2.

**9. Outdoor Burners**

Outdoor burners, including wood, corn, coal and other similar burners that generate smoke, are prohibited in all districts.

**10. Small Wind Energy Systems (SWES)**

Small wind energy systems as defined by this ordinance are permitted in all districts. Free standing SWES are permitted to a height of twenty-eight (28') feet. SWESs attached to existing structures are permitted to a height of forty-eight (48') feet.

**B. Accessory Structures in Agricultural, RA-1, RA-2, RA-3, RA-4 and RB Zoning Districts**

**1. Location of Detached Accessory Structures**

Detached accessory structures or portions thereof, shall not be erected in nor extend into the front yard area.

A detached accessory structure may be located in a rear or side yard provided that all requirements of this Section are met.

**2. Setbacks of Detached Accessory Structures**

An accessory structure in an agriculturally or residentially zoned district shall be in compliance with all setback requirements in the table below, and other standards of this ordinance:

**Table 3.1: DETACHED ACCESSORY STRUCTURE SETBACK REQUIREMENTS**

Setback From	Minimum Setback	Comments
Front lot line	Front yard (front building line of house)	For a double frontage lot, the minimum setback from the side street lot line is 20 feet.
Side street lot line	Side street yard (side building line of house)	For a private detached garage with direct access to the side street, the minimum setback is 20 feet.
Side lot line	Required side yard for principal building (See Section 26.02)	Required setback from the side lot line is 3 feet when in the rear yard.
Rear lot line	3 feet	For a detached accessory structure in a multiple-family complex of 2 or more principal buildings, the minimum setback is 10 feet.
Principal Building	6 feet	All structures shall comply with setback and fire rating requirements in the Building and Fire codes.
Other accessory structures	6 feet	All structures shall comply with setback and fire rating requirements in the Building and Fire codes.

**3. Size and Lot Coverage**

- a. Detached accessory structures in rear yards shall not occupy more than thirty-five percent (35%) of the required rear yard.
- b. Detached accessory structures shall not have more than eight hundred (800) square feet of gross floor area, unless they are located on parcels with greater than two (2) acres of land.
- c. For land parcels greater than two (2) acres, the area of the detached accessory structures shall not exceed the usable residential floor area of the ground floor of the principal building, excluding the floor area of all attached garages.
- d. The total floor area of all attached accessory structures, including attached garages, shall not exceed the usable residential floor area of the ground floor of the principal building.

**4. Height**

Detached accessory structures shall not exceed sixteen (16) feet, unless otherwise allowed in this ordinance.

**5. Number of Permitted Accessory Structures**

For any single-family or duplex dwelling unit, the following shall apply:

- a. If any portion of the principal building is defined as a private garage, one (1) additional accessory structure is permitted per lot or parcel.
- b. If the private garage is detached from the principal building, one (1) additional accessory building is permitted per lot or parcel.
- c. Two detached accessory buildings are permitted for duplexes sharing a common side by side wall.

**C. Accessory Structures in the Residential D Zoning District**

All accessory structures in the Residential D Zoning District shall be in compliance with all requirements and standards in Article 16.00.

**D. Accessory Structures in Community, Office, NC, CC, RC, C, D, LCMR and Industrial Zoning Districts**

**1. Setbacks**

An accessory structure in a Community, Office, Commercial, LCMR, or Industrial Districts shall be in compliance with all setback requirements of the principal building, and other standards of this ordinance, except as follows:

- a. For allowed residential uses, detached accessory structures shall be located at least ten (10) feet from any other structure.
- b. Accessory structures on double frontage lots shall observe front yard setback requirements on both street frontages.

## **Section 3.04 -- LAWFUL USE OF A STRUCTURE AS A DWELLING UNIT**

Any incomplete structure that does not meet the requirements of the Building Code or this Ordinance shall not be issued a Certificate of Occupancy and shall not be used as a dwelling. For the purposes of this section, a basement that does not have a residential structure constructed above it shall be considered an incompletely constructed structure. The restrictions shall not prevent temporary use of structure as a residence in accordance with Section 3.07.

## **Section 3.05 -- RESIDENTIAL DESIGN STANDARDS**

Any residential structure, including manufactured housing not located in manufactured housing parks, shall be erected or constructed in compliance with the following residential design standards.

### **A. Area and Bulk Regulations**

Manufactured housing shall comply with all regulations normally required for site-built housing in the zoning district in which it is located, unless specifically indicated otherwise herein. No side of a footprint of a residential building may be less than twenty (20) feet.

### **B. Foundation**

Any residential structure, including manufactured housing, shall be placed on a permanent foundation to form a complete enclosure under the exterior walls. The foundation shall be constructed in accordance with the adopted building code of the City. Manufactured housing shall be securely anchored to its foundation in order to prevent displacement during windstorms. The wheels, tongue and hitch assembly, and other towing appurtenances, shall be removed before attaching a manufactured housing unit to its permanent foundation.

### **C. Other Regulations**

Residential structures shall be constructed in compliance with applicable state, Federal, or local laws or ordinances, including the adopted building code of the City.

### **D. Floodplain**

All dwelling units, including manufactured housing, shall comply with Chapter 5, Section 5-5 of the City of Midland Code of Ordinances regarding location within a flood plain.

### **E. Use**

Manufactured housing and other structures shall be used only for the purposes permitted in the zoning district in which they are located.

### **F. Attachments**

Any exterior attachments or extensions onto a dwelling unit, such as entry steps and storage buildings, shall comply with the adopted building code.

## **Section 3.06 -- HOME OCCUPATIONS**

### **A. General Requirements**

Home occupations shall be subject to the requirements of the zoning district in which they are located, and are subject to the following standards, unless otherwise specified elsewhere in this Ordinance:

1. Home occupations shall be clearly incidental and secondary to the use of the dwelling as a

residence.

2. No more than one-third (1/3) of the habitable floor space of the residence may be used for the home occupation.
3. No persons are employed other than the dwelling occupants.
4. No such home occupation may be conducted in any accessory structure or attached garage.
5. One (1) sign not exceeding two (2) square feet in area.
6. No outdoor display and/or storage of materials, goods, supplies, or equipment used in the home occupation or business shall be permitted on the premises in residential districts.
7. Sales accessory to services associated with the home occupation are permitted when such activity does not generate vehicular or pedestrian traffic in greater volumes than would normally be expected in a residential neighborhood and goods pertaining to the home occupation are not visible from the street.
8. Automobile repair facilities, automobile bump and paint shops, junkyards, automobile storage, new and used vehicle sales and similar uses are prohibited as home occupations.
9. Garage, yard and rummage sales shall be excluded from the provisions of this section unless they occur with regular frequency.
10. Such uses shall not:
  - a. change the character or appearance of the residence;
  - b. result in any signs or displays on the premises, except as permitted herein;
  - c. require equipment other than what would commonly be found on a residential premises

## **Section 3.07 -- TEMPORARY BUILDINGS, STRUCTURES AND USES**

### **A. General Requirements**

Temporary buildings and structures shall comply with the following requirements:

#### **1. Temporary Buildings, or Structures Used for Residential Purposes**

A building or structure may be approved for temporary residential use only while damage to the principal dwelling due to fire, flood, ice, wind, or other natural disaster is being repaired.

Also, a manufactured housing unit or other approved living quarters may be occupied as a residence on a temporary basis on sites for which a building permit has been issued for construction of a new dwelling unit, or for major repair or remodeling of an existing dwelling unit subject to the following:

- a. Such permits may be issued by the Building Official for up to six (6) months in duration and may be renewed for two (2) periods of up to six (6) months, provided that work is proceeding in an expeditious manner.
- b. The total duration of a temporary permit shall not exceed one and one-half (1.5) years.

- c. A request for an extension shall be submitted in writing to the Building Official no less than two (2) weeks prior to the expiration of the permit.
- d. Temporary structures shall comply with the setback standards for the district in which they are located.
- e. An approved temporary structure may be moved onto a site fourteen (14) days prior to commencement of construction and shall be removed within fourteen (14) days following issuance of a Certificate of Occupancy for the permanent dwelling.
- f. The applicant may be required to furnish the City with a performance guarantee in an amount determined by the Building Official to assure removal of the temporary structure and a notarized affidavit that the temporary dwelling will be removed before issuance of a Certificate of Occupancy on the new dwelling.

**2. Temporary Buildings or Structures Used for Nonresidential Purposes during Construction**

Temporary buildings or structures for nonresidential use, including semi- trucks/trailers and concrete batch plants, shall be permitted only when the intended use is by a contractor or builder in conjunction with a construction project, and only after review and approval by the Building Official. Such temporary structures shall be removed immediately upon completion of the construction project and prior to a request for a Certificate of Occupancy for the project.

**3. Temporary Outdoor Uses.**

- a. Temporary outdoor uses are permitted by administrative review and issuance of a Temporary Outdoor Use Permit. These uses are:
  - i. Any use where a tent or other temporary structure will be used. These may include car ports, pods, semi trailers, etc.
  - ii. Any outdoor use where electricity will be used.
  - iii. Any use selling food items to the public.
  - iv. Outdoor sales of any items.
  - v. Outdoor fundraising events on public or private property.
- b. Garage, rummage and yard sales are excluded from this requirement but may only be held (3) three times per year for no longer than (3) three days for each sale.

## **Section 3.08 -- USES OTHERWISE NOT INCLUDED WITHIN A DISTRICT**

The Director of the Planning and Community Development Department shall have the authority to determine if a use that is not cited by name as a permitted use in a Zoning District may be permitted because the proposed use is clearly similar in nature and compatible with the listed uses in the district. No use shall be permitted in a district under the terms of this section if the use is specifically listed as a use permitted by right or as a conditional land use in any other district.

## **Section 3.09 -- YARD AND BULK REGULATIONS**

### **A. General Regulations**

All lots, buildings, and structures shall comply with the following general yard and bulk regulations unless specifically stated otherwise in this Ordinance:



**1. Minimum Lot Size**

Every lot or parcel of land created subsequent to the effective date of this Ordinance shall comply with the lot size, lot coverage, and setback requirements for the district in which it is located. Space which has been counted or calculated as part of a side yard, rear yard, front yard, courtyard, lot area or other open space requirement of this Ordinance shall not be counted or calculated to satisfy or comply with a yard or bulk regulation requirement for any other building or structure. No yards in existence on the effective date of this Ordinance, shall subsequently be reduced below, or further reduced if already less than, the minimum yard requirements of this Ordinance.

**2. Double Frontage Lots**

On double frontage lots both street rights-of-way shall be considered front lot lines and front yard setbacks shall apply, except if a frontage is controlled by access restrictions, rear yard setbacks shall apply to said frontage.

**3. Flag Lots**

On a lot which is located behind other parcels or lots fronting a public or private road, but which has a narrow extension to provide access to the public or private road, the width of the extension shall adhere to the minimum lot width standards for the district in which the lot is located.

**4. Number of Principal Uses per Lot**

Only one principal building shall be placed on a lot of record or parcel in single-family residential districts RA-1, RA-2, RA-3, RA-4. In a single family site condominium project, only one principal building shall be placed on each condominium lot, as defined in Section 2.02.

**5. Projections into Required Yards**

Fire escapes, fire towers, chimneys, platforms, balconies, access wells in ingress/egress windows, boiler flues, and similar projections shall be considered part of the building, subject to setback requirements for the district in which the building is located. However, projections into required yards shall be permitted as listed in Table 3.2:

**Table 3.2: PROJECTIONS INTO YARDS**

*The following projections are permitted in any required yard, except as noted:*

Projection	Yards Where Allowed	Restrictions
Air conditioning equipment (pad mounted)	All	Not permitted in front yards in residential districts
Access drives	All	None
Arbors and trellises	All	None, unless located in the front or side yards. A six (6) foot setback from front or side lot lines is required.
Awnings and canopies	All	May project 10 percent or less of yard depth
Bay windows <sup>1</sup>	All	See footnote 1
Balconies	Rear	Shall project no more than six (6) feet into required rear yard setback
Belt Courses	All	Shall project no more than three (3) feet into any yard
Boiler Flues	All	Shall project no more than three (3) feet into any yard
Chimneys	All	Shall project no more than three (3) feet into any yard
Cornices <sup>1</sup>	All	Shall project no more than three (3) feet into any yard
Downspouts	All	None
Eaves, overhanging	All	Shall project no more than three (3) feet into any yard
Egress Window Wells	All	Shall project no more than three (3) feet into any yard
Elevator Shafts	Rear	Shall not project more than six (6) feet into rear yard

**Table 3.2: PROJECTIONS INTO YARDS**

The following projections are permitted in any required yard, except as noted:

Projection	Yards Where Allowed	Restrictions
Fences		See Article 7.00
Fire Escapes, Fire Towers	Rear	Shall project no more than six (6) feet into any rear yard setback
Flagpoles	All	See section 3.03, sub-section E
Gardens	All	None
Gutters	All	Shall project no more than three (3) feet into any yard
Hallways, connecting	Rear	Shall not project more than six (6) feet into any rear yard
Handicapped access ramps <sup>2</sup>	All	See footnote 2
Hedges	All	None
Leaders	All	Shall project no more than three (3) feet into any yard
Light poles, ornamental	All	None
Lintels	Rear	Shall not project more than six (6) feet into any rear yard
Ornamental Features	Rear	Shall not project more than six (6) feet into any rear yard
Paved terraces, uncovered porches, patios, decks, and steps <sup>3</sup>	All	See footnote 3
Pilasters	All	Shall project no more than three (3) feet into any yard
Propane tanks	All	Not permitted in front yards in Residential Districts
Approved signs	All	See Article 8.00
Sills	All	Shall project no more than three (3) feet into any yard
Stairways, open unroofed	Rear	Shall project no more than six (6) feet into any rear yard setback
Television or radio towers or antennas	All	Not permitted in front yards in Residential Districts
Trees, shrubs, and flowers	All	None
Walls		See Article 7.00
Window air conditioning units	All	None

#### Notes Related to Table 3.2

1. **Bay Windows**

Bay windows, including their window sills, belt courses, cornices, eaves, overhanging eaves, and other architectural features may project into a required yard subject to the following conditions:

- Such structures shall not project into any required side yard more than one-third (1/3) of its required width nor more than three (3) feet, provided that the length of any such projection shall not exceed one-third (1/3) of the length of the side yard in which such projection occurs.
- Such structures shall not project into any required rear yard more than three (3) feet.

2. **Handicapped Access Ramps**

Handicap access ramps in all residential zoning districts are exempt from front, rear, and side yard building setback standards and maximum lot coverage formulas.

3. **Paved Terraces, Uncovered Porches, Patios, Decks, and Steps**

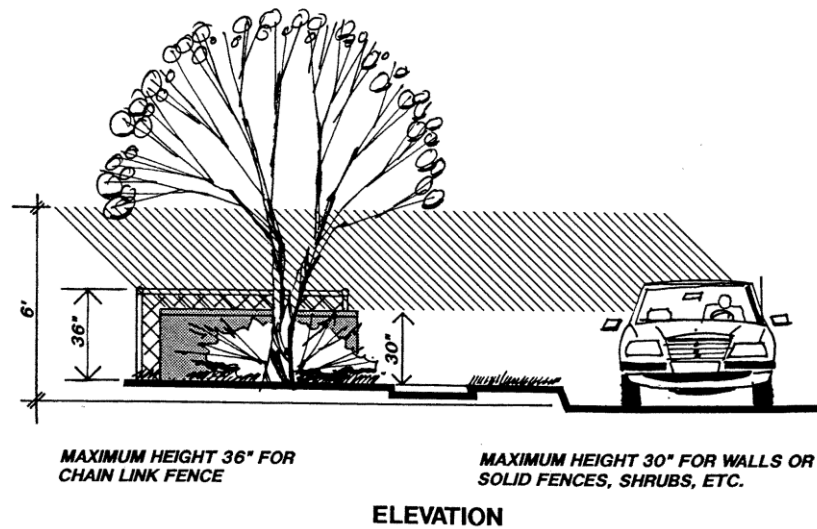
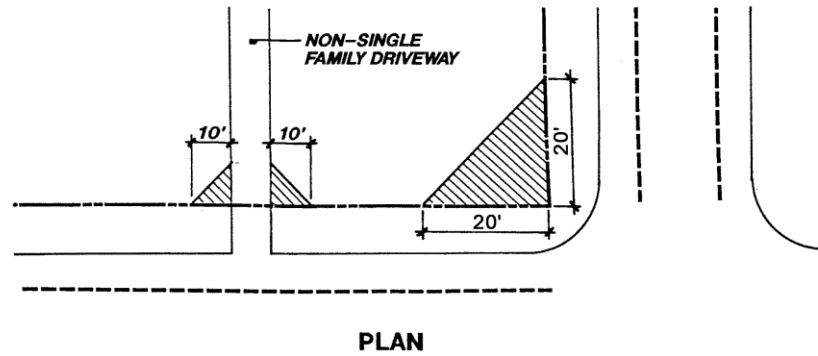
Open paved terraces, uncovered porches, patios, decks, and steps above grade may project into a yard subject to the following conditions:

- Such structure shall not be located closer than ten (10) feet from the front or street lot line.
- Such structure shall not be located closer than ten (10) feet from the rear lot line.
- Such structure shall not be located closer than six (6) feet from any accessory building or structure.
- Such structure shall not be located closer than five (5) feet from the side lot line.
- Uncovered porches existing at the time of adoption of this ordinance, meeting Items a. – d. of this

section, and may be covered but not enclosed, provided they do not project more than six (6) feet into the required front yard. These porches may extend the full front of the dwelling.

**6. Unobstructed Sight Distance**

- a. No vehicles, fence, wall, structure, or planting shall be erected, established, or maintained on any lot which will obstruct the view of drivers in vehicles approaching an intersection of two roads or the intersection of a road and a driveway for all uses other than a single-family or two-family residence (see diagram on page 3-12) with the following exceptions:
  - (1) Fences, walls, structures, or plantings located in the triangular unobstructed sight area described below shall not be permitted to obstruct cross-visibility and shall not exceed a height of two and one half (2 ½) feet above the top of the curb unless the fence has less than or equal to 20% of the vertical surface opaque so as not to obstruct vision or prevent observation of activities enclosed within the fence.
  - (2) Trees shall be permitted in the triangular area provided that limbs and foliage are trimmed so that they do not extend into the cross-visibility area or otherwise create a traffic hazard.
- b. Unobstructed Sight Area. The unobstructed triangular area is described as follows:
  - (1) The area formed at the corner intersection of two public right-of-way lines, the two (2) sides of the triangular area being twenty (20) feet in length measured along abutting public rights-of-way lines, and third side being a line connecting these two sides, or
  - (2) The area formed at the corner intersection of a public right-of-way and a driveway, the two (2) sides of the triangular area being ten (10) feet in length measured along the right-of-way line and edge of the driveway, and the third side being a line connecting these two sides.
  - (3) Where the unobstructed sight area or a portion thereof, is held in different ownership, all required setbacks, including the sight obstruction setback requirements, shall be applied as though the property is held in common ownership.



## Clear Vision Zones

### 7. Relocation of Existing Buildings

No existing building or structure shall be relocated upon any parcel or lot in The City of Midland unless the building or structure conforms to all zoning and building code requirements for the district in which the building or structure is to be located and a building permit has been secured.

### 8. Building Height Conformance

No building or structure shall be constructed upon any parcel or lot in the City of Midland unless the building or structure's height conforms to the regulations promulgated in the Tri-City Area Joint Airport Zoning Ordinance as amended.

## Section 3.10 – COMMERCIAL DRIVEWAYS

### A. Intent

The intent of this section is to establish standards for driveway spacing and the number of driveways permitted during the site plan review process. The standards of this section are intended to promote safe and efficient travel within the City; minimize disruptive and potentially hazardous traffic conflicts; separate traffic conflict areas by reducing the number of driveways; provide efficient spacing standards between driveways, and between driveways and intersections; protect the substantial public investment in the street system; and to ensure reasonable access to

properties, though not always by the most direct access.

The standards herein apply to site plans and plats along roads which are under the jurisdiction of the City of Midland, Midland County Road Commission, Bay County Road Commission or Michigan Department of Transportation (MDOT). Those agencies have driveway design and permit requirements; however, those general standards may not be sufficient to meet the particular traffic issues and objectives of The City of Midland. Therefore, the driveway standards herein may be more restrictive than those provided by the road agencies. Construction within the public right-of-way under the jurisdiction of Midland or Bay County or MDOT still shall also meet the permit requirements of the road agency. Where any conflicts arise, the more stringent standard shall apply.

The City of Midland's Master Plan presents four (4) specific goals to further improve the overall transportation network in our community. This section strives to implement Goal 1 by regulating the placement of commercial driveways to ensure that all developments are constructed to a standard that maximizes pedestrian and vehicular safety and minimizes risks and negative impacts of new commercial development:

**Goal 1: Maintain and improve safety and efficiency in the transportation system to support land use patterns and ensure that Midland remains an attractive place to live, work, and visit.**

## **B. General Standards for Driveway Location**

1. Driveways shall be located so as to minimize interference with the free movement of traffic, to provide adequate sight distance, and to provide the most favorable driveway grade.
2. Driveways, including the radii but not including right turn lanes, passing lanes and tapers, shall be located entirely within the right-of-way frontage, unless otherwise approved by the City of Midland.
3. Spacing between driveways where traffic signals are involved shall meet the requirements for spacing of driveways from street intersections as shown in Table 3.5
4. Arterials, collectors, and local streets are as classified in the City of Midland Master Plan.

## **C. Commercial Driveway Spacing Standards for a Parcel**

Each parcel on which a commercial or industrial development is located on shall be permitted one (1) commercial driveway to provide reasonable access for regular traffic and emergency vehicles, while preserving traffic operations and safety along the public roadway. Additional driveways may be permitted for a property only under one of the following:

1. One (1) additional driveway may be allowed for properties with a continuous frontage of over three hundred (300) feet if it is determined there are no other reasonable access opportunities, provided the additional driveway complies with the requirements in subsection D, below.
2. On parcels with frontage along two (2) streets, one driveway may be permitted to each street provided that proper driveway spacing is achieved from the roadway intersection as shown in Table 3.5.
3. When considering additional driveway placement, Table 3.3 and the following criteria shall be reviewed:

- a. Will not be detrimental to public safety.
  - b. Will not be detrimental to the safety and operation of the street.
  - c. Are necessary for safe and efficient use of the property.
  - d. Will prevent/reduce traffic congestion and confusion, based on a traffic impact study.  
(See Section 3.10(I))
4. For parcels that are not on a corner, one-way drives may be permitted per parcel.

## D. Commercial Driveway Spacing Standards for Separate Parcels

1. **Spacing between driveways on separate parcels or developments:** The minimum spacing between two commercial driveways shall be determined based upon posted speed limits along the parcel frontage as shown in Table 3.3. The minimum spacing indicated below is based on Michigan Department of Transportation Guidelines and are measured between driveway centerlines. The minimum spacing between driveways may be reduced if one driveway has a traffic signal.

**Table 3.3: Minimum Spacing Between Driveways on Separate Parcels**

Posted Speed Limit (MPH)	Minimum Driveway Spacing – Same Side of the Street (Ft)		
	Arterials <sup>2</sup>	Collector Roadways <sup>2</sup>	Local Roadways
25	130 <sup>1</sup>	105	N/A
30	185 <sup>1</sup>	125	50
35	245 <sup>1</sup>	150	75
40	300	185	100
45	350	230	100
50	455	275	100
55	455+	275+	100

<sup>1</sup> If adjacent parcels are over 300 feet in width, then the minimum spacing between driveways shall be 300 feet.

<sup>2</sup> Collector and Arterial Roadways may require more restrictive spacing based on local conditions

### Table 3.3 General Notes:

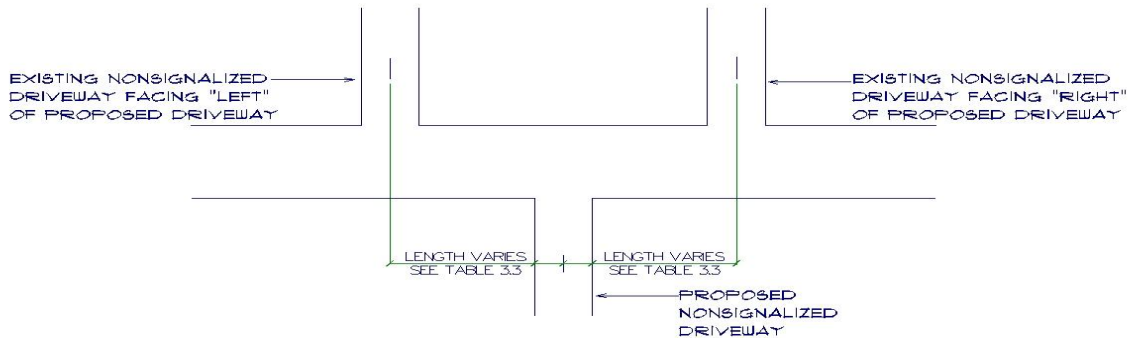
- Spacing between driveways is measured centerline to centerline.
- Driveways shall be placed as far from adjacent driveways as practical.
- Driveway sharing or driveway cross access with adjacent parcels may apply when minimum spacing is not possible and at the discretion of the City.
- Spacing of driveways from intersections takes precedence over spacing from other driveways.

For site with insufficient street frontage to meet the above criterion, the following alternatives may be considered:

- a. Construction of the driveway may be required along a side street. A shared driveway with an adjacent property may be used.
  - b. Construction of a driveway along the property line farthest from the intersection.
  - c. A service/frontage road as described in Sections 3.10(E) and 3.10(F) may be required.
2. **Spacing between driveways on the opposite sides of the street:** To reduce left-turn conflicts,

new commercial driveways shall be aligned with driveways or streets on the opposite side of the roadway where possible. Spacing between driveways on opposite side of a street shall be indicated in Table 3.4. For sites with insufficient street frontage to meet the above criterion, it may require construction of the driveway along a side street, a shared driveway with an adjacent property, construction of a driveway along the property line farthest from the intersection or require a service/frontage road as described in Sections 3.10(E) and 3.10(F).

#### SPACING BETWEEN DRIVEWAYS ON OPPOSITE SIDES OF THE STREET



**Table 3.4: Spacing Between Driveways on Opposite Sides of the Street**

Posted Speed Limit (MPH)	Minimum Driveway Spacing – Opposite Side of the Street (Ft)	
	From Existing Driveway Facing Right	From Existing Driveway Facing Left
25	255	100
30	325	150
35	425	150
40	525	150
45	630	200
50+	750	250

Table 3.4 Notes:

- Table 3.4 applies to Arterials and Collectors Streets.
- Local Street driveways are approved at the discretion of the City.
- Spacing between driveways is measured centerline to centerline.
- This standard may be reduced by the City in the case of a single proposed driveway serving a parcel, where no other point of reasonable access is feasible. No reduction is allowed if two or more driveways are proposed to serve the parcel.
- If the proposed driveway is a boulevard, or two access points acting as one-way pair, existing driveway spacing to the right applies to inbound movements, and existing driveway spacing to the left applies to outbound movements.

3. **Spacing from intersections:** Minimum spacing requirements between a proposed commercial driveway and an intersection either adjacent to or on the opposite side of the street in no instance shall be less than the distances listed in Table 3.5. The following measurements are from the near edge of the proposed driveway, measured at the throat perpendicular to the street, to the near lane edge of the intersecting street or pavement edge for uncurbed sections.

**Table 3.5: MINIMUM COMMERCIAL DRIVEWAY SPACING FROM STREET INTERSECTIONS**

<b>Location of Driveway</b>	<b>Minimum Spacing for a Full Movement Driveway</b>	<b>Minimum Spacing for a Channelized Driveway Restricting Left Turns</b>
Along Arterial or from Expressway Ramps	300 feet	300 feet
Along Arterial intersecting another Arterial	250 feet	125 feet
Along Arterial intersecting a Collector or Local Street	200 feet	125 feet
Along a Collector	125 feet	75 feet
Along a Local Street or Private Road	75 feet	50 feet

**Arterials and Collectors are as classified in the City of Midland Master Plan.**

For sites with insufficient street frontage to meet the above criterion, construction of the driveway along a side street, a shared driveway with an adjacent property, construction of a driveway along the property line farthest from the intersection or require a service/frontage road as described in Sections 3.10(E) and 3.10(F) is encouraged.

## **E. Standards for Shared Driveways and Service/Frontage Roads**

The use of service roads, in conjunction with driveway spacing, is intended to preserve traffic flow along major thoroughfares and minimize traffic conflicts, while retaining reasonable access to the property. Where noted above, or where reducing the number of access points may have a beneficial impact on traffic operations and safety while preserving the property owner's right to reasonable access, access from a side street, a shared driveway or service road connecting two or more properties or uses is encouraged. In particular, service drives, frontage roads or at least a connection between uses is encouraged in the following cases:

1. Where the driveway spacing standards of this section cannot be met.
2. When the driveway could potentially interfere with traffic operations at an existing or potential traffic signal location.
3. The site is along an Arterial.
4. The property frontage has limited sight distance.
5. The fire department recommends a second means of emergency access.

## **F. Design Standards for Service Drives**

Service roads as an alternate to numerous individual driveways serving a series of uses or lots shall be designed according to the following additional standards:

### **1. Location**

Service roads shall generally be parallel or perpendicular to the front property line and may be located either in front of, adjacent to, or behind, principal buildings and may be



placed in required yards. In considering the most appropriate alignment for a service road, the setbacks of existing and/or proposed buildings and anticipated traffic flow for the site shall be considered.

2. **Access Easement**

The service road shall be within an access easement permitting traffic circulation between properties. This easement shall be at least forty (40) feet wide. This easement shall be recorded with the Midland or Bay County Register of Deeds.

3. **Construction and Materials**

Service roads shall have a base, pavement in accord with city standards and when required curb and gutter in accordance with City standards.

4. **Parking**

The service road is intended to be used exclusively for circulation, not as a parking maneuvering aisle. It may be required that "no parking" signs be posted along the service road. In reviewing the site plan, temporary parking may be permitted in the easement area where a continuous service road is not yet available, provided that the layout allows removal of the parking in the future to allow extension of the service road. Temporary parking spaces permitted within the service drive shall be in excess of the minimum required under Article 5.00, Off-Street Parking and Loading Requirements.

5. **Access**

The location of all accesses to the service/frontage road shall be approved based on the driveway spacing standards of this Article.

6. **Temporary Access**

Temporary access points may be approved where a continuous service road is not yet available and a performance bond or escrow is created to assure elimination of temporary access when the service road is continued.

7. **Elevation**

The site plan shall indicate the proposed elevation of the service/frontage road at the property line and the Engineering Department shall maintain a record of all service road elevations so that their grades can be coordinated.

8. **Landscaping**

The greenbelt between a service road and the public street right-of-way shall be landscaped as specified in Article 6.00, Landscaping and Screening.

9. **Maintenance**

Each property owner shall be responsible for maintaining the service/frontage road. A maintenance agreement, approved by the City Attorney, shall be required.

**G. Commercial Driveway Design**

Commercial driveways shall be designed according to the standards of the City of Midland and in accordance with the following:

1. **Throat Width & Length**

- a. **Throat Width:** The typical commercial driveway design shall include one ingress lane and one egress lane with a combined maximum throat width of thirty (30) feet, measured from face to face of curb.

- b. Throat Length:
  - i. There shall be a minimum of twenty (20) feet of throat length for entering and exiting vehicles at the intersection of a driveway and pavement of the public road or service drive as measured from the pavement edge.
  - ii. For a driveway serving between one hundred (100) and four hundred (400) vehicles in the peak hour (two way traffic volumes) the driveway shall provide at least sixty (60) feet of throat length.
  - iii. For a driveway serving over four-hundred (400) vehicles per peak hour (two way traffic volume) and for any driveway controlled by a traffic signal, adequate throat length shall be determined by a traffic impact study.
  - iv. In areas where significant pedestrian/bicycle travel is expected, the ingress and egress lanes should be separated by a four to ten foot (4' to 10') wide median with pedestrian refuge area.
2. **Additional Egress Lanes Required**  
For high traffic generators, or for commercial driveways along roadways experiencing or expected to experience congestion, two (2) egress lanes may be required (one a separate left turn lane). The total width of such a driveway shall be between thirty-seven and thirty-nine feet (37' – 39'), with one fifteen foot (15') wide ingress lane and two (2) eleven to twelve foot (11' – 12') wide egress lanes.
3. **Boulevard Entrances.**  
Where a boulevard entrance is desired, a fully curbed island shall separate the ingress and egress lanes. The radii forming the edges on this island shall be designed to accommodate the largest vehicle that will normally use the driveway. The minimum area of the island shall be one hundred eighty (180) square feet. Landscaping may be required on the section outside the public right-of-way. Such landscaping shall be tolerant of roadway conditions. Direct alignment of boulevard entrances is discouraged.

## **H. Modification of Standards for Commercial Driveways for Special Situations**

During site plan review dealing with commercial driveways, the Planning Commission shall have the authority to modify the standards of this Article upon consideration of the following:

1. The standards of this section would prevent reasonable access to the site.
2. Access via a shared driveway or service/frontage road is not possible due to the presence of existing buildings or topographic conditions.
3. Roadway improvements (such as the addition of a traffic signal, a center turn lane or bypass lane) will be made to improve overall traffic operations prior to project completion, or occupancy of the building.
4. The use involves the redesign of an existing development or a new use that will generate less traffic than the previous use or will move traffic more efficiently.
5. The proposed location and design is supported by a Road Authority other than the City of Midland as an acceptable design under the conditions. The Planning Commission may also request the applicant provide a traffic impact study in accordance with Section 3.17 to support the requested access design.

6. The modification shall be of the minimum amount necessary, but in no case shall spacing of a full-access driveway from another driveway be less than sixty (60) feet, measured centerline to centerline.

## **I. Traffic Impact Studies**

Traffic impact studies shall be required based on thresholds and related recommendations established per the “Evaluating Traffic Impact Studies –A Recommended Practice for Michigan Communities” (ETIS), as amended and related Institution of Transportation Engineers (ITE) specifications as amended. Studies provided in the ETIS are dependent on trip generation thresholds primarily described in Tables 1 and 3 of the ETIS. Details regarding content of any required traffic study are as provided in the ETIS. The types of required studies shown in Table 3 of the ETIS are indicated below.

- Rezoning/Use Traffic Study – Standard study related to trip generation rates below 50 vehicles in one direction in the peak traffic hour or below 500 daily vehicle trips.
- Traffic Impact Assessment (TIA) – complete study that is significantly more detailed than the standard study, with related trip generation rates from 50-99 vehicles in one direction in the peak traffic hour or 500-749 daily vehicle trips.
- Traffic Impact Statement (TIS) – More detailed study than the TIA. This study is related to trip generation rates with 100+ vehicles in one direction in the peak traffic hour or 750+ daily vehicle trips.
- Regional Traffic Analysis - More detailed study than the TIS. This study is related to trip generation rates with 500+ vehicles in one direction in the peak traffic hour.

Any required traffic studies may require review by a City designated professional traffic consultant or engineer.

## **Section 3.11 -- GRADING REGULATIONS**

### **A. Intent and Scope of Requirements**

In addition to the requirements in Chapter 29 of the Midland Code of Ordinances, compliance with the grading regulations set forth herein shall be required as follows:

#### **1. Intent**

Grading regulations are established to control the excavation and filling of land, to assure adequate drainage away from structures and to a natural or established drainage course, and to assure protection of trees on sites where grading is to take place and to protect adjacent properties from receiving excess storm water runoff. The regulations set forth herein also establish procedures and requirements for grading permits, inspection of finished grading operations, and penalties for violation of the grading regulations.

#### **2. Scope of Application**

A Grading Plan approved by the Building Official and the City Engineer shall be required in all instances where grading, excavating, filling, stockpiling, or other alterations to the land are proposed. "Filling" includes the dumping of soil, sand, clay, gravel, rock, garbage, rubbish or other wastes or byproducts on a site. The regulations in this section do not apply to normal soil removal for basement or foundation work when a building permit has been duly issued by the Building Official.

### **B. Grading Plan**

#### **1. Grading Plan**

The fee holder owner of the property concerned shall first submit a Topographic Plan for review and approval by the Building Official and City Engineer.

**2. Grading Plan Standards**

At a minimum, topographic plans shall be drawn at a scale of not less than one (1) inch equals fifty (50) feet, and shall show existing and proposed grades and topographic features. The City Engineer may require other data.

**C. Grading Standards**

**1. Slope Away From Buildings**

All buildings and structures shall be constructed at an elevation that provides a sloping grade away from the building or structure, thereby causing surface water to drain away from the walls of the building to a natural or established drainage course without negatively impacting neighboring properties. The finished grade around a building within one hundred (100) feet of a street curb line shall not be less than one quarter inch per foot above the curb height of the street on which the building faces, unless this slope cannot be reasonably achieved on a parcel of property, in which case the Building Official or City Engineer may establish the appropriate grade.

**2. Grade on Vacant Lot Adjacent to Existing Building**

When a new building is constructed on a vacant lot between two (2) buildings or adjacent to an existing building, the existing established grade shall be used to determine the grade around the new structure if the provisions of Section 3.11, item C.1, are met. If the existing slope does not meet the provisions, the Building Official or City Engineer will establish the appropriate grade.

**3. Prohibited Runoff**

New grades shall not be established that would permit an increase in the runoff of surface water onto adjacent properties or public roads, except through established drainage courses, or cause surface runoff to accumulate on the surface of an adjacent property.

**4. Excavations of Holes**

The excavation, maintenance or continued existence of unprotected, unbarricaded, open or dangerous holes, pits, or wells that constitute or are reasonably likely to constitute a danger or menace to the public health, safety, and welfare is prohibited. However, this restriction shall not apply to excavations for which a permit has been acquired from the City under this chapter or the building code of the City, provided such excavations are properly protected with fencing, guard rails, and warning signs, as may be approved by the Building Official. This section also shall not apply to lakes, streams, ditches, reservoirs, or other bodies of water under the jurisdiction of the State of Michigan, Midland County, Bay County, the City of Midland, or other governmental agency.

**5. Soil Erosion and Sedimentation**

If required by Public Act 451 of 1994, as amended, a Soil Erosion and Sedimentation Control Permit shall be obtained. Proposed grading shall comply with other requirements of the County Drain Commission.

**D. Review, Inspection, and Approval Procedures**

A Certificate of Occupancy may be issued by the City when the requirements set forth herein and in other applicable ordinances have been complied with. The filing of a surety bond to the City, issued by a surety company authorized to do business in Michigan, may be required with the application for a Grading Certificate in appropriate cases. The amount of the surety bond will be determined by the City Engineer and should be sufficient to rehabilitate the property upon default of the operator or such other reasonable expenses.

## Section 3.12 -- LIGHTING

Subject to the provisions set forth herein, all parking areas, walkways, driveways, building entryways, off-street parking and loading areas, and building complexes with common areas involving commercial, industrial, office, multiple family, or manufactured housing park development shall be sufficiently illuminated to ensure the security of property and the safety of persons using such public or common areas.

### A. General Requirements

1. Only non-glare lighting shall be permitted.
2. Unless otherwise exempted by the provisions of this Ordinance, all outdoor lighting shall be shielded, so as to focus the light downward onto the site and away from adjoining properties. The light source shall not be directly visible from adjoining properties.
3. Lighting shall be shielded so that it does not cause glare or interfere with the vision of motorists (see diagram on page 3-21).
4. Light trespass from a property shall not exceed 1.0 foot-candles at the property line, measured five feet from the ground.
5. To prevent sky glow, lighting shall be shielded or designed to prevent light to project above a ninety (90) degree horizontal plane (see illustration on page 3-21).
6. Uplighting of buildings for aesthetic purposes shall be confined to the target surface.
7. Gas station canopies and similar structures shall have lighting fixtures that are completely shielded along the perimeter of the canopy. The maximum light level allowed under a canopy shall be twenty (20) foot-candles, measured five (5) feet above the surface.

### B. Intensity

In parking areas, the light intensity shall average a minimum of 1.0 foot-candle, measured five (5) feet above the surface. In pedestrian areas, the light intensity shall average a minimum of 2.0 foot-candles, measured five (5) feet above surface.

### C. Permitted Lighting Sources and Shielding Requirements

Outdoor lighting shall comply with the following use and shielding requirements:

**Table 3.6: PERMITTED LIGHTING TYPES AND REQUIRED SHIELDING**

Lamp Type	Permitted Use	Shielding Required
High Pressure Sodium, Metal Halide (filtered and in enclosed luminaries only) <sup>1</sup>	Street lighting; parking and security areas; sports parks, tennis courts; residential / agricultural security lighting, signage, display and sports lighting	Full
Fluorescent (warm white and natural lamps preferred)	Residential lighting, internal sign lighting (see Article 8.00)	Full
Wall Pack	Parking and security areas	Full
Incandescent greater than 100 watt	Sensor activated residential lighting	Full
Incandescent less than 100 watt	Porch lighting and other low-wattage residential uses	None
LED	Any	Full

Any light source of 50 watts or less, are not required to provide shielding unless otherwise regulated.	Any	None
Glass tubes filled with neon, argon, and krypton	Display/advertising	None

<sup>1</sup> Where color rendering is a critical concern, Metal Halide lights should be used.

## D. Height

Except as noted below, lighting fixtures shall not exceed a height of thirty (30) feet measured from the ground level to the centerline of the light source. Fixtures should provide an overlapping pattern of light at a height of approximately seven (7) feet above ground level.

These height standards may be exceeded in commercial and industrial districts, upon written approval by the Director of Planning and Community Development, based on consideration of the following: the position and height of buildings, other structures, and trees on the site; the potential off-site impact of the lighting; the character of the proposed use; and, the character of surrounding land use. In no case shall the lighting exceed the maximum building height in the district in which it is located.

## E. Sign Lighting

Signs shall be illuminated in accordance with the regulations set forth in Article 8.00.

## F. Prohibited Lighting

### 1. Outdoor Building and Landscaping Lighting

Unshielded illumination of the exterior of a building or landscaping is prohibited except with incandescent fixtures having lamps of 100 watts or less.

### 2. Laser Source Light

The use of laser source light or any similar high intensity light for outdoor advertising when projected above the horizontal is prohibited.

### 3. Searchlights

The operation of searchlights for advertising purposes is prohibited between 10:00 p.m. and sunrise the following morning.

## G. Exceptions

### 1. Fossil Fuel Light

Fossil fuel light produced directly or indirectly from the combustion of natural gas or other utility-type fossil fuels (e.g., gas lamps) is exempt from the provisions of this Section.

### 2. Temporary Carnival and Civic Uses

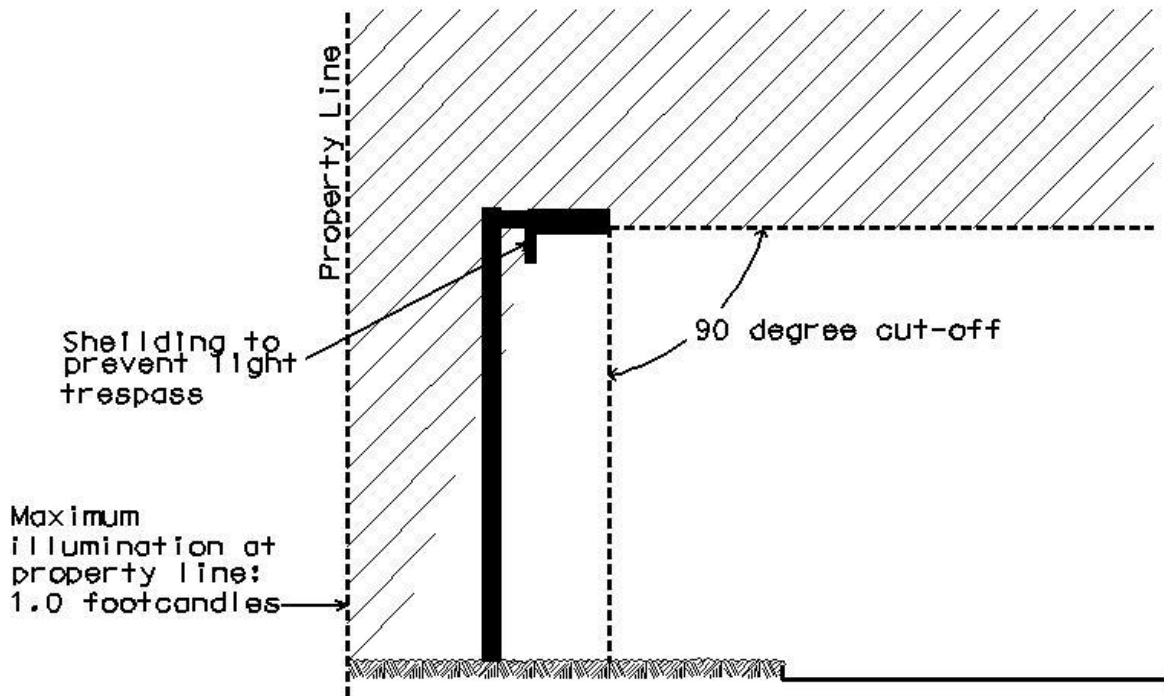
Lighting for permitted temporary circus, fair, carnival, or civic uses is exempt from the provisions of this Section.

### 3. Construction and Emergency Lighting

Lighting necessary for construction or emergencies is exempt from the provisions of this article provided that said lighting is temporary and is discontinued immediately upon completion of the construction work or abatement of the emergency.

#### 4. **Special Conditions**

Additional exception may be permitted, subject to site plan review, and upon finding that unique or special conditions on the site warrant the exception.



### **Lighting Fixture Orientation and Shielding**

#### **H. Site Plan Requirements**

All lighting, including lighting that is intended to be primarily decorative in nature, shall be shown on the site plans. For all site plan reviews, a photometric plan shall be submitted as part of the site plan in sufficient detail to allow determination of the effects of such lighting upon adjacent properties, traffic safety, and overhead sky glow. The objective of these specifications is to minimize undesirable off-site effects.

## **Section 3.13 -- EXCEPTIONS**

#### **A. Essential Services**

Essential services, as defined in Section 2.02, shall be permitted as authorized and regulated by franchise agreements and by state, federal, and local ordinances and laws. Essential services will be permitted in all use districts. It is the intention of this Ordinance to exempt such uses from those regulations governing lot area, building or structure height, building or structure placement, and use of land in the City that would not be practical or feasible to comply with.

Proposals for construction of essential services shall be subject to site plan review and conditional land use review, if applicable (See Section 27.02). The intention of the City is to achieve efficient use of the land and alleviate adverse impact on nearby uses or lands. Essential services buildings and uses should be reasonably necessary for the public convenience, and should be designed, erected and landscaped to conform harmoniously with the general architecture and character of such district and shall not be permitted in clear vision areas.

**B. Exceptions to Height Standards**

The height limitations of this Ordinance shall not apply to roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building; fire walls, parapet walls not exceeding three (3) feet in height; sky lighting, solar collectors, towers, steeples, cupolas, belfries, domes, ornamental towers, stage lofts and screens; flagpoles, chimneys, smokestacks, individual domestic radio and television aerials, wireless masts and satellite dishes; water tanks or similar structures, fire and hose towers. Such structures may be erected without regard to height limitations imposed in the district in which the same is located, to a maximum height of one hundred (100) feet from the building grade. This maximum height limitation does not apply in the Industrial "A" and "B" Districts.

**Section 3.14 -- PERFORMANCE GUARANTEE****A. Intent and Scope of Requirements**

To insure compliance with the provisions of this Ordinance and any conditions imposed there under, the City Council may require that a performance guarantee be deposited with the City to insure faithful completion of improvements, in accordance with Michigan Public Act 100 of 2006 as amended.

Improvements means those features and/or actions considered necessary to protect natural resources or the health, safety, and welfare of the city residents and/or the future users or inhabitants of the proposed project. Improvements for which a performance guarantee may be required include, but are not limited to, roadways, parking, lighting, utilities, sidewalks, screening and drainage.

**B. General Requirements**

The performance guarantee shall meet the following requirements:

1. The performance guarantee shall be in the form of an irrevocable bank letter of credit or cash escrow. If the applicant posts a letter of credit, the credit shall require only that the City present the credit with a draft and an affidavit signed by the City Manager attesting to the City's right to draw funds under the credit. If the applicant posts a cash escrow, the escrow instructions shall provide that the escrow agent shall have a legal duty to deliver the funds to the City whenever the City Manager presents an affidavit to the agent attesting to the City's right to receive funds whether or not the applicant protests that right.
2. The performance guarantee shall be submitted at the time of issuance of the permit authorizing the activity or project. If appropriate, based on the type of performance guarantee submitted, the City shall deposit the funds in an interest-bearing account in a financial institution with which the City regularly conducts business.
3. The amount of the performance guarantee shall be sufficient to cover the estimated cost of the improvements for which the performance guarantee is required. The applicant shall provide an itemized schedule of estimated costs to complete all such improvements. The Building Official shall determine the exact amount of the performance guarantee.
4. The entire performance guarantee, plus interest accrued, if any, shall be returned to the applicant following inspection by the Building Official and a determination that the required improvements have been completed satisfactorily. The performance guarantee may be released to the applicant in proportion to the work completed on various elements, provided that a minimum of ten percent (10%) shall be held back on each element until satisfactory completion of the entire project.
5. An amount not less than ten percent (10%) of the total performance guarantee may be retained for a period of at least one (1) year after installation of landscape materials to



insure proper maintenance and replacement, if necessary. This amount shall be released to the applicant upon certification by the Building Official that all landscape materials are being maintained in good condition.

### **C. Unsatisfactory Completion of Improvements**

Whenever required improvements are not installed or maintained within the time stipulated or in accordance with the standards set forth in this Ordinance, the City may complete the necessary improvements itself or by contract to an independent developer, and assess all costs of completing said improvements against the performance guarantee. If the performance guarantee is not sufficient to cover the cost of required improvements, the City may complete the required improvements and then place a lien on the property to recover the full cost of such improvements. Prior to completing said improvements, the City shall notify the owner, site plan review applicant, or other firm or individual responsible for completion of the required improvements.

## **Section 3.15 -- WASTE DUMPSTERS, COMPACTORS, AND ENCLOSURES**

Adequate refuse disposal facilities shall be required for all uses, except single-family and two-family residences.

### **A. Standards for Siting and Screening of Trash Dumpsters or Compactors**

Dumpsters or compactors may be permitted or required as accessory to any use other than single and two-family residential uses, subject to the following conditions:

#### **1. Location**

Dumpsters or compactors shall not be located in the required front yard setback. Any such dumpster shall have adequate vehicular access, shall not encroach on a required parking area, and shall not conflict with entrances to principal buildings. Dumpsters shall be located to minimize their visibility from adjacent streets and adjacent properties. Dumpsters shall be setback a minimum of ten (10) feet from any side or rear property line, and shall be located as far as practicable from any adjoining residential district.

#### **2. Concrete Pad**

Dumpsters or compactors shall be placed on a concrete pad. The concrete pad should extend a minimum of three (3) feet in front of a dumpster enclosure.

#### **3. Screening**

Dumpsters and compactors shall be screened from view from adjoining property and public streets and thoroughfares. Any dumpsters or compactor shall be screened on three sides with a permanent building, decorative masonry wall, or wood fencing, at least one (1) foot above the height of the enclosed dumpster. The height of the screening shall not exceed eight (8) feet. The screening material shall be compatible with the exterior of the principal building. The fourth side of the screening shall be equipped with an opaque lockable gate that is the same height as the enclosure around the other three sides.

#### **4. Waiver of Screening Requirements**

The screening requirements may be waived upon finding that the unscreened dumpster or compactor will not be visible from adjoining property or from any public road, or upon finding that if the dumpster or compactor is visible from the adjoining property the impact will not be detrimental because of the size or location of the proposed dumpster or compactor or because of the nature of the adjoining use.

If it is determined those circumstances have changed and screening is needed, the Building Official may order screening around the dumpster or compactor at a later date. This section is not intended to require the screening of any dumpster or compactor used on a temporary basis during construction, remodeling or demolition of a building.

**5. Bollards**

Bollards (concrete filled metal posts) or similar protective devices shall be installed at the opening of the enclosure to prevent damage to the screening wall or fence.

**6. Site Plan Requirements**

The location and method of screening of dumpsters shall be shown on all site plans.

## **Section 3.16 -- COMMUNICATION FACILITIES**

### **A. Reception and Broadcast Antennae Facilities**

In all zoning districts the installation of reception and broadcast antenna facilities shall be permitted as an accessory use, subject to the provisions in this section. This section does not apply to wireless communication facilities (See Section B).

**1. Purpose**

The purposes of this section are as follows:

- a. To provide reasonable regulations for the placement of reception antenna facilities.
- b. To promote safety and prevent danger to persons and property resulting from accidents involving antenna facilities that may become dislodged and fall due to wind load, snow load or other forces.
- c. To require screening of ground-mounted facilities and to minimize the visibility of roof or structure mounted facilities in the interest of maintaining the high architectural and aesthetic qualities of the City and in the interest of maintaining and preserving property values.

**2. Ground-Mounted or Tower-Mounted Antennas**

Ground-mounted or tower-mounted antennas shall be subject to the following conditions:

- a. The maximum height of any part of a ground-mounted or tower-mounted antenna shall not exceed twenty-eight (28) feet or the minimum height necessary to achieve adequate reception.
- b. Ground-mounted or tower-mounted antennas in a residential zoning district shall not be located in the front yard.

**3. Roof-Mounted Antennas**

Antennas mounted on a roof of a building shall be subject to the following regulations:

- a. Antennas mounted on a building shall not exceed an overall height of twenty-eight (28) feet.
- b. Roof-mounted antennas shall be permitted on an accessory structure located in a yard between the principal building and any property line.

**4. General Requirements**

All antennas shall comply with the following regulations:

- a. Antennas shall not be used to display a sign or message board.
- b. Permits, if required by the adopted building or electrical code, shall be obtained prior to construction of an antenna. The applicant shall submit an administrative site plan for administrative review indicating the exact location where the antenna will be located, plus applicable electrical and structural plans and documentation.
- c. All wiring to a freestanding antenna shall be installed underground.
- d. In the event that approval is requested for an antenna that is higher than the minimum

standards specified in this section, or if other variations from the required standards are proposed, documentation shall be provided demonstrating the need for such variations in order to achieve adequate reception. The following criteria shall be used to evaluate a request for a variation:

- i. No alternate sites would provide adequate coverage while meeting the minimum requirements;
  - ii. The variation is needed due to existing physical features that are not self-created such as topography, vegetation or existing structures;
  - iii. The variation is the minimum needed to achieve adequate coverage; and
  - iv. Appropriate design measures have been taken to minimize the affect of the variation, such as a “stealth design”, landscaping, etc.
- e. Notwithstanding the setback requirements specified previously in this section, antennas with a wind resistance surface of seven (7) square feet or less and all open element and monopole antennas shall have a setback from any residential-zoned district or existing or proposed right-of-way or other publicly traveled road, whichever is greater: the total height of the structure and attachments thereto or the required setbacks for principal buildings specified in the Schedule of Regulations for the zoning district.

Where antennas with a wind resistance surface of seven (7) square feet or less and all open element and monopole antennas abut a parcel of land zoned for a use other than residential, the structure shall comply with the required setbacks for principal buildings specified in the Schedule of Regulations for the zoning district in which the facility is located.

All antennas with a wind resistance over seven (7) square feet shall be located in the rear yard only, and shall be subject to the setback and height standards for the district in which they are located. Any such antenna shall be located to obscure its view from adjacent properties and roads, to the maximum extent possible.

## **B. Wireless Communication Facilities**

### **1. Purpose**

It is the general purpose and intent of the City of Midland to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. However, it is the further purpose and intent of the City to provide for such authorization in a manner which will retain the integrity of neighborhoods and the character, property values and aesthetic quality of the community at large. In fashioning and administering the provisions of this section, an attempt has been made to balance these potentially competing interests.

Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, it is the further purpose and intent of this Section to:

- a. Facilitate adequate and efficient provision of sites for wireless communication facilities.
- b. Identify districts considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions.
- c. Recognize that operation of a wireless communication system may require the establishment of facilities in locations outside of the districts considered best for such facilities. In such cases, it has been determined that it is likely that there will be greater

- adverse impact. Consequently, more stringent standards and conditions should apply to the review, approval and use of such facilities.
- d. Ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures and buildings.
  - e. Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused and/or unnecessary facilities in a timely manner.
  - f. Minimize adverse visual impact of transmission towers and telecommunications facilities through careful design, siting, landscaping and innovative camouflaging techniques.
  - g. Promote and require, where feasible, shared use/co-location of transmission towers and antenna support structures as the primary option rather than construction of additional single-use transmission towers.
  - h. Promote public health and welfare and prevent potential damage to property by ensuring transmission towers and antenna support structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or determined to be structurally unsound.
  - i. Minimize the negative visual impact of wireless communication facilities on neighborhoods, community landmarks, historic sites and buildings, natural beauty areas and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, and the use of structures which are designed for compatibility, including the use of existing structures and the avoidance of lattice structures that are unnecessary, taking into consideration the purposes and intent of this section.

## 2. Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. **Administrative Site Plan.** A site plan submitted pursuant to Article 27 for co-locations and small scale facilities specified in the following Section 3. Because of their minimal impacts, these projects or changes are permitted to provide less detailed information than a full scale site plan. The level of information is intended to be proportionate to the extent of the change and to ensure adequate review for compliance with applicable standards.
- b. **Administrative Review.** Select smaller scale projects and expansions or changes in use to existing sites do not require review by the Planning Commission; but shall undergo an administrative site plan review for approval by city staff.
- c. **Antennas.** An electrical conductor or group of electrical conductors that transmit or receive radio waves, excluding amateur radio antennas.
- d. **Attachment.** An antenna or other piece of related equipment affixed to a transmission tower, building, light or utility pole, or water tower.
- e. **Co-location.** Placement of an antenna on an existing transmission tower, building, light or utility pole or water tower where the antenna and all supports are located on the existing structure.
- f. **Private or Public Utility Cabinets.** Ground mounted structures that are used to house telecommunication equipment.
- g. **Site Plan.** See definition in Section 2.02.
- h. **Stealth.** Any transmission tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and transmission towers designed to look other than like a transmission tower such as light poles, power poles and trees.
- i. **Support Structure.** Structures erected or modified to support wireless communication antennas. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, light poles, guyed towers, and stealth structures

which appear to be something other than a mere support structure.

- j. **Telecommunications Facilities.** Any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a transmission tower or antenna support structure. However, the term telecommunications facilities shall not include any satellite earth station antenna one meter or less in diameter, regardless of zoning category.
- k. **Transmission Tower.** The monopole or lattice framework designed to support transmitting and receiving antennas. For the purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers."
- l. **Wireless Internet Facilities.** Wireless internet facilities, including integrated units that have a radio and antenna in one unit and point to point and point to multi-point antennae, are considered to be a telecommunication facility.

### 3. Authorization to Construct or Install Wireless Communications Facilities

Table 3.6: Subject to the standards and conditions set forth herein, wireless communication facilities shall be permitted uses in the following circumstances and in the following districts:

Type/Location of Wireless Communication Facility	Districts Permitted	Approval Procedure
<b>Attached to existing structures:</b>		
Attached to an existing conforming structure that will not be materially altered or changed in appearance	Non-residential districts	Administrative Site Plan Review
Co-location upon an existing transmission tower previously approved for co-locations and no additional height is proposed	All districts	Administrative Site Plan Review
<b>Located on a municipally owned site:</b>		
Attached to an existing structure or monopole up to 150 feet in height	All districts	Administrative Site Plan Review
New monopole up to 150 feet in height	Non-residential districts	Site Plan Review
New monopole up to 150 feet in height	Residential districts	Conditional Use, Site Plan Review
<b>Located on a site owned by another governmental entity, religious institution or public school:</b>		
New monopole up to 150 feet in height	All non-residential districts	Site Plan Review
New monopole up to 150 feet in height	Residential districts	Conditional Use and Site Plan Review
<b>New facility not addressed above:</b>		
Monopole or other support structure up to 150 feet in height	IA, IB, LCMR, RC	Site Plan Review
Monopole support structure up to 150 feet in height	Residential, Community, CC, OS, NC, D, C	Conditional Use and Site Plan Review
Wireless internet facilities 3 feet or less in dimension.	All districts	Administrative Site Plan Review

### 4. Standards and Conditions

- a. No telecommunication facility or transmission tower, as defined in this Section, may be constructed, modified to increase its height, installed or otherwise located within the City except as provided in this Section.
- i. Public Health and Safety: Facilities and/or support structures shall not be detrimental to the public health, safety and welfare.
  - ii. Harmony with Surroundings: Facilities shall be located and designed to be harmonious with the surrounding areas.
  - iii. Compliance with Federal, State and Local Standards: Wireless communication facilities shall comply with applicable federal and state standards, including requirements promulgated by the Federal Aviation Administration (FAA), Federal Communication Commission (FCC), and Michigan Aeronautics Commission. Wireless communication support structures shall comply with all applicable building codes.

No wireless communication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless the applicant has demonstrated to the City that the proposed location is the only technically feasible location for the provision of personal wireless services as required by the FCC.

- iv. Conflict with Tri-City Regulations: In the event of any conflict between this Section and the Tri-City Zoning Ordinance, the Tri-City regulations shall take precedence.
- v. Maximum Height: Applicants shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs which may result in lower heights. The maximum height of a new or modified support structure and antenna shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure), but shall not exceed one hundred fifty (150) feet. However, higher towers may be permitted, subject to the granting of a waiver provided for by sub-section 9, if necessary to achieve co-location or the minimum height for attaining an adequate signal.

The buildings, cabinets, and other accessory structures shall not exceed the maximum height for accessory structures in the zoning district in which the facility is located.

- vi. Minimum Setbacks: The setback of a new or modified support structure shall be no less than the total height of the structure and attachments thereto.

New support structures are to be setback at least 300 feet from a property zoned or used for residential purposes. New support structures that are proposed to be setback less than 300 feet from a property zoned or used for residential purposes shall be required to obtain Conditional Use approval. In addition to other considerations, the applicant must demonstrate, through written documentation provided by an engineer, that a location 300 feet or more from a property zoned or used for residential purposes is not feasible.

Buildings and facilities accessory to the wireless communication facility (such as equipment shelters, guy wire anchors) shall comply with the required setbacks

for principal buildings specified in the Schedule of Regulations for the zoning district in which the facility is located.

- vii. Access: Unobstructed permanent access to the support structure shall be provided for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. The permitted type of surfacing, dimensions and location of such access route shall be based on evaluation of the location of adjacent roads, layout of buildings and equipment on the site, utilities needed to service the facility, proximity to residential districts, disturbance to the natural landscape, and the type of vehicles and equipment that will visit the site.

The access road must be properly designed and constructed to ensure adequate access by emergency vehicles.

- viii. Division of Property: The division of property for the purpose of locating a wireless communication facility shall be permitted only if all zoning requirements, including lot size and lot width requirements are met.
- ix. Exterior Finish. If a facility is conditioned to require paint, it shall initially be painted with a flat (i.e., non-reflective) paint color, and thereafter repainted as necessary with a flat paint color, unless it is determined that flat paint color would lead to more adverse impact than would another type of paint color.
- x. Stealth Design: Wireless communication facilities should be sited where they blend with the existing and projected development for any given vicinity. Where appropriate, antennas should be located on existing structures such as a church steeple, or a clock tower, eliminating the need for additional new support towers. Facilities should appear integrated, and architecturally compatible with the existing structure to promote visual harmony.

Where feasible, a self-supporting transmission tower should be designed to closely resemble a commonplace object that blends with its surroundings. Some examples of stealth structures are tree poles in wooded areas or a flag pole. Wireless communication facilities located on highly visible sites will only be allowed when appropriately camouflaged. All stealth or faux structures shall emulate architectural or landscape features typical of the surrounding area in terms of architectural style, height, bulk, mass, material, and color.

- xi. Signs and Graphics. No signs, striping, graphics or other devices that draw attention are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than three (3) square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than two (2).
- xii. Fencing: Wireless communication facilities shall be enclosed by a fence having a maximum height of allowed by the district in which it is located. Barbed wire is not permitted except in the IA and IB districts.
- xiii. Lighting: Any exterior lighting, except as required for FAA regulations for airport safety, shall be manually operated and used only during night maintenance checks or in emergencies. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled in accordance with Section 3.12 of this Ordinance.

- xiv. **Structural Integrity:** Wireless communication facilities and support structures shall be constructed and maintained in structurally sound condition, using the best available technology, to minimize any threat to public safety. The support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted.
  - xv. **Maintenance:** A plan for the long term, continuous maintenance of the facility shall be submitted. The plan shall identify who will be responsible for maintenance and shall include a method of notifying the City if maintenance responsibilities change.
- b. A telecommunication facility or transmission tower, which requires a conditional use permit, shall be processed in accordance with the conditional use permit procedures of this ordinance and in accordance with established administrative policies. The conditional use criteria contained in this ordinance and the application requirements and standards of this Section of the Ordinance shall govern approval or denial of the conditional use permit application. In the event of a conflict in criteria, the criteria contained in this Section shall govern. No building permit shall be issued prior to completion of this conditional use permit process, including any appeals.

## 5. Administrative site plan requirements

- a. For situations requiring administrative site plan review, the following information shall be provided:
  - 1. All plans shall adhere to the provisions of Article 27.
  - 2. Signed certification by a professional engineer licensed by the State of Michigan with regard to the manner in which the proposed structure will fall in the event of damage, accident or injury, i.e., fall line, and that the setback area provided shall accommodate the structure should it fall or break and provide a reasonable buffer in the event the structure fails.
  - 3. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.
  - 4. Access (cross section of road access).
- b. **Standards and Conditions Applicable to Conditional Land Use Facilities:** In addition to the standards and conditions described in the preceding subsection where approval is sought for a wireless communication facility that is considered Conditional Land Use, the applicant shall provide sufficient documentation and maps to demonstrate the need for the facility in the proposed location because of one or more of the following conditions:
  - i. Proximity to an interstate or major thoroughfare.
  - ii. Proximity to areas of population concentration.
  - iii. Proximity of other wireless communication facilities.



- iv. Lack of ability to meet co-location requirements.
- v. Concentration of commercial, industrial, and/or other business centers.
- iv. Presence of signal interference due to masses of trees, topography, or other obstructions.
- v. Other specific reason(s) creating the need for the facility in the specific location being proposed.

**6. Co-location of Additional Antennas on Existing Transmission Towers**

- a.** Co-location Requirements: It is the policy of the City to minimize the overall number of newly established locations for wireless communication facilities and wireless communication support structures within the city and to encourage the use of existing structures for attached wireless communication facilities. If a provider fails or refuses to permit co-location on a facility owned or controlled by it, where co-location is feasible, the result will be that a new and unnecessary additional structure will be required, in contradiction with this policy. Co-location shall be required unless an applicant demonstrates that co-location is not feasible.

Co-location shall be deemed feasible for the purpose of this Section where all of the following are met:

- 1. The wireless communication provider or property owner where co-location is proposed will accept market rent or other market compensation for co-location and the wireless communication provider seeking the facility will pay such rates.
- 2. The site on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- 3. The co-location being considered is technically reasonable, e.g. the co-location will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennas and the like.

New transmission towers shall be designed to accommodate co-location of additional providers:

- 1. New transmission towers of a height of one hundred (100) feet or more shall be designed to accommodate co-location of a minimum of two additional providers either outright or through future modification to the transmission tower.
- 2. New transmission towers of a height of at least sixty (60) feet and no more than one hundred (100) feet shall be designed to accommodate co-location of a minimum of one additional provider either outright or through future modification to the transmission tower.

**7. Requirements for Co-location**

- a.** A conditional land use permit for the construction and use of a *new* wireless communication facility shall not be granted unless and until the applicant demonstrates that a feasible co-location is not available for the coverage area and capacity needs.

- b. All new and modified wireless communication facilities shall be designed and constructed to accommodate co-location.
- c. Penalties for not permitting co-location.

The policy of the community is for co-location. If a party who owns or otherwise controls a wireless communication facility shall fail or refuse to alter a structure to accommodate a proposed and otherwise feasible co-location such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect. In addition, if a party refuses to allow co-location in accordance with the intent of the article and, this action results in construction of a new tower, the City may refuse to approve a new wireless communication support structure from the party for a period of up to five (5) years. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of the five-year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

- d. The applicant must demonstrate to the Planning Commission that a feasible co-location on an existing tower for the new wireless communication facility is not available for the coverage and capacity.
- e. Antennae which are attached to an existing tower are encouraged to minimize the adverse visual impacts associated with the proliferation and clustering of towers. Co-location of antennas by more than one (1) carrier on existing towers shall take precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:
  - 1. A tower which is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower.
  - 2. An existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the co-location of an additional antenna.
  - 3. A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved on-site when approved by the Planning Commission.

In addition to co-location on an existing transmission tower, an antenna may be collocated on existing buildings, light poles, utility poles and water towers. Said antenna(s) shall not exceed the building height allowed in the zone, or 18 feet above the structure, whichever is less. Said antenna(s) shall project no more than two (2) feet away from the existing structure, and the color of the antenna(s) shall blend in with the existing structure and surroundings.

#### 8. **Application Requirements for Installation, Construction, or Increasing the Height of Transmission Tower**

In addition to standard building permit application material, an applicant seeking to construct, install or increase the height of a transmission tower shall submit the following information.

- a. A description of the proposed transmission tower location, design and height.
- b. The capacity of the transmission tower in terms of the number and type of antennas it is designed to accommodate.
- c. Documentation from an engineer demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the

- Federal Communications Commission (FCC).
- d. A signed agreement stating that the applicant will allow co-location with other users, provided all safety, structural and technological requirements are met. This agreement shall also state that any future owners or operators will allow co-location on the transmission tower.
  - e. A landscape plan drawn to scale showing proposed and existing landscaping, including type, spacing, size and irrigation methods.
  - f. Plans showing the connection to utilities, right-of-way required, ownership of utilities and easements required.
  - g. Documents demonstrating that necessary easements have been obtained.
  - h. Plans showing how vehicle access will be provided.
  - i. Documents demonstrating that the Federal Aviation Administration (FAA) has reviewed and approved the proposal. Alternatively, when a special use permit process is required, submit a statement documenting that notice of the proposal has been submitted to the FAA. The special use permit process may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes involving increased height or additional lighting other than as initially approved, then that initial special use permit approval shall be void. A new application will need to be submitted, reviewed and approved through an additional special use permit process. No building permit application shall be submitted without documents demonstrating FAA review and approval.
  - j. The names, addresses and telephone numbers of all owners of other transmission towers or usable antenna support structures within a one-half (1/2) mile radius of the proposed new transmission tower site, including City-owned property.
  - k. An affidavit attesting to the fact that the applicant made diligent, but unsuccessful efforts for permission to install or collocate the applicant's telecommunications facilities on City-owned facilities or usable antenna support structures located within a one-half (1/2) mile radius of the proposed transmission tower site.
  - l. An affidavit attesting to the fact that the applicant made diligent, but unsuccessful efforts to install or collocate the applicant's telecommunications facilities on transmission towers or usable antenna support structures owned by other persons located within a one-half (1/2) mile radius of the proposed transmission tower site.
  - m. Written, technical evidence from an engineer(s) that the proposed transmission tower or telecommunications facilities cannot be installed or collocated on another person's transmission tower or usable antenna support structure located within a one-half (1/2) mile radius of the proposed transmission tower site because of the coverage requirements of the applicant's communications system.
  - n. Each application to allow construction of a transmission tower shall include a written statement from an engineer(s) that the construction and placement of the transmission tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties.
  - o. A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed transmission tower, antennas, and ancillary facilities from at least four (4) points within a three (3) mile radius. Such points shall be chosen by the applicant with review and approval by the City to ensure that various potential views are represented.
  - p. Documentation from an engineer that alternative sites within a radius of at least one-half (1/2) mile have been considered and have been determined to be technologically unfeasible or unavailable.
  - q. A current overall system plan for the City, showing facilities presently constructed or approved and future expansion plans.
  - r. A statement providing the reasons for the location, design and height of the proposed transmission tower or antennas.

## 9. **Waivers and Variances**

- a. Any waiver to the requirements of this Section shall be granted only pursuant to the following provisions. The criteria for granting a waiver shall be limited to this sub-section, and shall not include criteria beyond this sub-section. A waiver shall not be issued to reduce the 300 foot setback from a residential use.
- b. The Planning Commission may grant a waiver from the provisions of *Subsection 3 - Standards and Conditions* providing the applicant demonstrates that:
  1. It is technologically impossible to locate the proposed transmission tower on available sites more than one-half (1/2) mile from a pre-existing transmission tower and still provide the approximate coverage the transmission tower is intended to provide;
  2. The pre-existing transmission tower that is within one-half (1/2) miles of the proposed transmission tower cannot be modified to accommodate another provider; and
  3. There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the transmission tower is intended to provide.
- c. The Planning Commission may grant a waiver to the setback requirements of *Subsection 3 - Standards and Conditions* upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.
- d. The Planning Commission may not grant a waiver to the one hundred fifty (150) foot height limitation. An applicant proposing a transmission tower taller than one hundred fifty (150) feet must apply to the Zoning Board of Appeals (ZBA) for a variance. In addition to the variance criteria usually considered by the ZBA, the applicant must demonstrate, through written documentation provided by an engineer, that the proposed height is the minimum height needed to meet service needs AND to accommodate future co-locations.

## 10. Removal of Facilities

- a. A condition of every approval of a wireless communication facility shall be adequate provision for removal of all or part of the facility by users and owners upon the occurrence of one or more of the following events:
  - i. When the facility has not been used for one hundred eighty (180) days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of nonuse.
  - ii. Six (6) months after new technology is available at reasonable cost, as determined by the City Council, which permits the operation of the communication system without the requirement of the support structure.
- b. Upon the occurrence of one or more of the events requiring removal, the property owner or persons who had used the facility shall immediately apply for any required demolition or removal permits and immediately proceed with and complete the demolition, removal, and site restoration.
- c. If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice, the City may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected

and/or enforced from or under the security posted at the time application was made for establishing the facility.

## Section 3.17 – PRIVATE ROADS

Any private road built in the City of Midland must comply with the following standards:

1. **Sidewalks.** Sidewalks are required on both sides of all private streets. The Planning Commission may waive the sidewalk requirement along private streets if an alternate pedestrian circulation system that provides access to all parts of a development is provided. The alternate pedestrian circulation system may incorporate hard surfaced and non-hard surfaced paths, provided that hard surfaced pathways provide access to all parts of a development.
2. **Construction Standards.** All private roads and appurtenances thereto shall be constructed in accordance the specifications of the City of Midland or the appropriate road agency.
3. **Minimum Right-of-way.** The minimum right-of-way width of any private road shall be 40 feet.
4. **Minimum Paved Road Width.** The paved width of all private roads must be as follows.

**Table 3.8: MINIMUM PAVED ROAD WIDTHS FOR PRIVATE ROADS**

<b>On-Street Parking</b>	<b>Paved Road Width (Measured from front of curb to front of curb)</b>
Permitted on both sides of street	28 feet
Permitted on one side of street <sup>1</sup>	28 feet
No on-street parking permitted <sup>1</sup>	20 feet

<sup>1</sup> If on-street parking is prohibited on one or both sides of the street, “no parking” signs must be erected where parking is prohibited.

5. **Signs.** The proprietor shall be responsible for placement of street name signs at all private street intersections in accordance with the requirements of the City of Midland. The proprietor shall also be responsible for placement of pavement markings and regulatory street signs (such as no parking signs, stop or yield signs, speed limit signs, and warning signs) as requested or required by the appropriate road agency. All regulatory signs shall be in conformance with the Michigan Manual of Uniform Traffic Control Devices.
6. **Intersection Angles.** Private roads shall be laid out to intersect other private roads or public streets as nearly as possible to ninety (90) degrees; in no case shall the intersection be less than eighty (80) degrees.
7. **Private Road Names.** Private road names shall be sufficiently distinct from other street names in the area to avoid confusion, particularly for emergency service providers.